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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Human rights situation in Palestine and other occupied Arab territories

Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem

Report of the United Nations High Commissioner for Human Rights*

Summary

In the present report, submitted pursuant to Human Rights Council resolution 34/28, the United Nations High Commissioner for Human Rights provides an overview of the implementation of the resolution, with specific reference to the recommendations of the United Nations international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and the United Nations Fact-Finding Mission on the Gaza Conflict.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. The present report of the United Nations High Commissioner for Human Rights is submitted pursuant to Human Rights Council resolution 34/28, in which the Council requested the High Commissioner to report on the implementation of the recommendations contained in the reports of the independent commission of inquiry on the 2014 Gaza conflict (A/HRC/29/52 and A/HRC/29/CRP.4), the United Nations independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63), and the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48).

2. In his report the High Commissioner provides an overview of the most recent developments in relation to the implementation of the recommendations included in the aforementioned reports. He addresses issues related to accountability for alleged violations and abuses of international human rights law and violations of international humanitarian law in connection with the 2014 escalation of hostilities in Gaza, including accountability for the excessive use of force within the scope of law enforcement operations within the Occupied Palestinian Territory. In addition, pursuant to paragraph 7 of the resolution, highlighting concerns about human rights defenders and civil society actors advocating for accountability, he examines the situation of human rights defenders, including legislation and actions that have restricted their work during the reporting period. Finally, he examines the responsibility of third States to ensure respect for international human rights and humanitarian law.

3. The present report should be read in conjunction with the detailed report of the High Commissioner entitled "Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem: comprehensive review on the status of recommendations addressed to all parties since 2009" (A/HRC/35/19). The review revealed that although most of the more than 900 recommendations formulated by international human rights mechanisms between 2009 and March 2017 were addressed to Israel, some were addressed to the Government of the State of Palestine and other Palestinian duty bearers, as well as to the United Nations, States Members of the United Nations, businesses, civil society and the international community (para. 2). The High Commissioner concluded that the overall rate for full implementation of the recommendations by the parties was extremely low: 0.4 per cent for Israel and 1.3 per cent for Palestinian duty bearers (paras. 60–61); the overall rate of full implementation by the international community and the United Nations stood at 17.9 per cent.

4. In the report, the High Commissioner proposed that Israel make full use of the technical assistance available from the Office of the United Nations High Commissioner for Human Rights (OHCHR) "to help with the implementation of the relevant recommendations, which includes the development of national mechanisms for reporting and following up on recommendations". He also urged Israel to conduct prompt, impartial and independent investigations of all alleged violations of international human rights law and all allegations of international crimes (paras. 67 and 69).

5. Similarly, the High Commissioner urged the State of Palestine to conduct prompt, impartial and independent investigations of all alleged violations of international human rights law and all allegations of international crimes, and to make full use of OHCHR technical assistance to help with the implementation of recommendations addressed to it (paras. 70–73).

6. The High Commissioner has previously taken note of the preliminary examination launched by the Prosecutor of the International Criminal Court in January 2015 into the situation in Palestine to establish whether the Rome Statute criteria for opening an investigation have been met, and further notes the latest update by the Office of the Prosecutor on the progress of the preliminary examination (para. 68).[1]

7. With respect to the international community, the High Commissioner suggested that the Human Rights Council consider recommending to the General Assembly that it make use

[1] See www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf.

of its powers under Article 96 (a) of the Charter of the United Nations in order to specify how all parties could fulfil their obligations in implementing the recommendations reviewed in his report (para. 75).

8. In the present report the High Commissioner builds on the comprehensive review provided by his previous report and focuses on the specific issues indicated in resolution 34/28.

II. Update on accountability

A. Accountability for the 2014 escalation of hostilities in Gaza

9. In its resolution the Human Rights Council called upon all duty bearers to pursue the implementation of the recommendations of the independent commission of inquiry on the 2014 Gaza conflict. Since the publication of the report of the commission of inquiry, the Secretary-General has provided regular updates on the progress, or lack thereof, by the parties to the conflict with respect to its recommendations.[2]

10. Alleged violations during the 2014 hostilities in Gaza mirror those documented and investigated in 2008/09 and 2012, underscoring the recurrent nature of the violations in Gaza and the failure of efforts to prevent their repetition.[3] Three and a half years after the escalation of hostilities, serious concerns persist regarding the lack of accountability by the Israeli and Palestinian authorities for alleged violations of international humanitarian law — including allegations of war crimes — and alleged violations and abuses of international human rights law. The High Commissioner cannot overstress that the overall lack of accountability contributes to fuelling the conflict.

11. The lack of independence, impartiality, promptness and transparency of the Office of the Israeli Military Advocate General is an additional concern. When investigations have taken place, they have rarely resulted in prosecutions, and sentences frequently do not match the gravity of the violation(s) committed by the Israeli security forces.

12. The last public update by the Military Advocate General on the status of criminal complaints related to the 2014 hostilities in Gaza dates back to August 2016.[4] Out of 500 complaints related to 360 incidents referred to the Military Advocate General in relation to alleged violations of international human rights and humanitarian law, criminal investigations were ordered into only 31 incidents, leading to the indictment of three soldiers for looting. This is the only outcome to date of all the complaints submitted on behalf of Gaza victims. Information received indicates that at least 22 appeals are still pending in relation to incidents that occurred during the 2014 hostilities in Gaza for cases in which a criminal investigation was either closed without charges or not opened at all.[5] This information notably pertains to the shelling of an area near a United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) school serving as a shelter for civilians in Rafah, which caused the death of 15 people, including 8 children,[6] and the case of 4 children killed by a shell while playing on a Gaza beach.[7]

13. The number of cases that, despite serious allegations, have not been subject to a criminal investigation and have been closed by the Military Advocate General for lack of

[2] See, in particular, A/71/364, paras. 40 and 51–55; and A/HRC/34/38, para. 42.

[3] See A/HRC/28/45, para. 16.

[4] See A/72/565, para. 56.

[5] Of the pending appeals, 19 were filed by the Palestinian Centre for Human Rights while 3 were submitted by the Al Mezan Centre for Human Rights and Adalah: Legal Center for Arab Minority Rights in Israel.

[6] See A/HRC/29/CRP.4, para. 440. See also appeal presented before the Attorney General of Israel in October 2016 by Adalah and the Al Mezan Centre for Human Rights and still pending. See further the statement by UNRWA on the initial closing of the case, available at www.unrwa.org/newsroom/official-statements/record-response-idf-closing-criminal-investigation-shelling-near-unrwa.

[7] See A/HRC/28/80/Add.1, para. 36; and A/HRC/29/CRP.4, paras. 632–633.

"reasonable grounds for suspicion of criminal behaviour" is of particular concern.[8] Hence, recommendations made by the commission of inquiry related to investigations and redress for victims remain unimplemented, as evidenced by the failure to open investigations into all credible allegations and the lack of access to justice. The focus of the Israeli military justice system on soldiers, as opposed to higher-level military commanders, enables the closure of cases — before the start of an investigation — for lack of prima facie evidence of a wrongful act committed by the soldier.[9] However, the responsibility of high-level military commanders remains unexamined, as is the overall responsibility of policymakers.[10]

14. The Secretary-General had underlined that "findings suggest a consistent failure by the Military Advocate General, who heads the military justice system, and the Attorney General to open investigations in cases where there is prima facie evidence, including eyewitness testimony, medical reports and audiovisual materials indicating that actions by State agents were unlawful".[11] The failures by the Military Advocate General undermine current and any future efforts to achieve accountability for these specific incidents by creating the misconception that cases were effectively addressed through the military justice system, hence enabling Israel to argue that justice is being pursued.

15. Palestinians face a range of other obstacles that prevent them from gaining access to justice, including to civil remedies. For Gaza victims in particular, a number of challenges remain which limit their ability to access accountability mechanisms, including restrictive legislation on State liability and on statutes of limitations, considerable court guarantees that must be paid and the ban on the entry of Gazans into Israel for legal procedures.[12] Reportedly, the limited prospects for compensation explain the consistent reduction in the number of civil compensation cases filed before Israeli courts in recent years on behalf of Gaza victims. While the Palestinian Center for Human Rights reported having filed 97 such cases in relation to the 2008–2009 hostilities (91 dismissed and 6 still pending as at January 2018), it filed only 5 cases (1 dismissed, 4 still pending) for the 2012 and 2014 hostilities.

16. In particular, the exclusion of the population of Gaza (as residents of an "enemy territory") from the scope of Israeli civil liability legislation in October 2014 — with retroactive applicability to July 2014 — has exempted Israel from liability for any wrongful act committed by the Israeli Defense Forces during the 2014 escalation.[13] The constitutionality of the exclusion clause has been challenged within the scope of a tort lawsuit brought to the District Court of Beersheva.[14] In this case, the plaintiffs are arguing that a similar exclusion clause had been ruled unconstitutional by the Supreme Court in 2006.[15] In its response to the court's decision, the Knesset's legal adviser supported the State's position that the clause was constitutional. The decision of the court was still pending as at mid-January 2018. It is expected to affect the outcome of three other cases of Palestinians killed by the Israeli Defense Forces during the 2014 escalation of hostilities that were filed by the Palestinian Center for Human Rights.

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[8] Israeli Defense Forces/Military Advocate General, decisions regarding exceptional incidents that allegedly occurred during operation Protective Edge. See A/71/364, para. 40 and A/HRC/34/38, para. 42.

[9] See http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/Operation-Protective-Edge-Investigation-of-exceptional-incidents-Update-4.aspx.

[10] See A/HRC/35/19, para. 20, including references.

[11] Ibid., para. 18, including references.

[12] See A/71/364, paras. 40 and 56–57.

[13] Ibid., paras. 56–57. See Israeli government decree of 26 October 2014 declaring the Gaza strip as "enemy territory" retroactively from 7 July 2014, thereby activating the exemption from damages to "persons who are not citizens or residents of Israel, and are residents of a territory outside Israel that has been declared an 'enemy territory' in a governmental decree".

[14] The case was brought to court by the Al Mezan Centre for Human Rights and Adalah on behalf of Ateyeh Nabaheen and his parents, from Gaza. On 16 November 2014, 15-year-old Ateyeh Nabaheen was shot and seriously wounded (leading to tetraplegia) by the Israeli Defense Forces as he was walking home on his family's land about 500 m from the Gaza fence.

[15] See *Adalah v. Government of Israel*, case HCJ 8276/05, decision of 12 December 2006 regarding amendment No. 7 of 2005, which excluded all residents of "conflict zones" as designated by the Minister of Defense.

17. In its report, the independent commission of inquiry also identified violations by the Palestinian Authority, Palestinian armed groups and the authorities in Gaza. The report of the Palestinian Independent National Committee established to follow up on the commission's recommendations addressed to the Palestinian Authority was issued in January 2017. While the Committee's report focuses on Israeli violations, it also elaborates on specific violations by Palestinian actors committed between 2014 and 2015. However, none of the findings specifically address the violations committed by Palestinian actors in Gaza during the 2014 escalation of hostilities, nor indicate what actions might be taken to establish accountability for such violations. To date, there is no information suggesting that any meaningful step has been taken by the Palestinian authorities to address violations by Palestinian actors during the 2014 escalation of hostilities.

B. Accountability for unlawful use of force

18. The independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, called upon Israel to "ensure full accountability for all violations … in a non-discriminatory manner, and to put an end to the policy of impunity".[16]

19. With respect to incidents that occur outside the context of active hostilities, and particularly in cases that pertain mainly to apparent excessive use of force by the Israeli Defense Forces, the Secretary-General and the High Commissioner have continuously expressed concerns as to the prevalence of a culture of impunity.[17] They also reported on the conviction for manslaughter of Sergeant Elor Azaria in the death of Abdelfattah al-Sharif, a Palestinian who, while already incapacitated after having allegedly stabbed an Israeli soldier, was shot in the head by another Israeli soldier. This conviction remains exceptional, and the 18-month prison sentence has been described as excessively lenient.[18] While the Military Appeals Court confirmed the conviction and the sentence of 18 months on 30 June 2017,[19] in September 2017 the Israeli Defense Forces Chief of Staff announced his decision to shorten the sentence by four months.[20]

20. Recent developments in two other cases further undermine confidence in the Israeli military justice system, as they seem to reinforce the culture of impunity. On 9 January 2018, the sentencing of Border Police officer Ben Deri was postponed, after more than three years of proceedings before the District Court of Jerusalem. On 15 May 2014, during a demonstration in Beitunia, officer Deri shot and killed 17-year-old Nadeem Nuwara, despite video evidence presented in court showing that he was not posing any threat.[21] The officer's criminal conduct was downgraded to negligent manslaughter based on his claim that he was not aware that his weapon contained live ammunition. Mr. Deri later admitted, in a plea bargain with Israeli prosecutors, that he had been guilty of negligence.[22] Within the scope of the plea bargain, the prosecution has argued for a sentence ranging between 20 and 40 months' imprisonment, while the defence has pleaded in favour of no additional restriction of liberty. The announcement of the sentence, initially expected in January 2018, was postponed until April 2018. The fact that the proceedings are likely to be concluded with a plea bargain, as well as the downgrading of the criminal conduct, raises concerns that the sentence will not be in line with the gravity of the crime.

21. On 12 January 2018, the media reported that an Israeli soldier who shot into a Palestinian car on 21 June 2016, killing 15-year-old Mahmoud Badran and injuring four

[16] See A/HRC/22/63, para. 114.

[17] See, for instance, A/71/364, para. 66; A/HRC/34/38, paras. 43–44; and A/HRC/35/19, paras. 17–18.

[18] See A/HRC/34/36, para. 78; A/HRC/34/38, para. 48; and A/HRC/35/19, para. 21.

[19] See A/72/565, para. 52.

[20] See A/HRC/37/38, para. 30.

[21] See a video of the event at www.theguardian.com/world/2014/may/20/video-indicates-killed-palestinian-youths-no-threat-israeli-forces.

[22] The family of Nadeem Nuwara had previously objected to the plea bargain but lost their appeal in the High Court.

others, including three other children,[23] will not stand trial and will only be dismissed from the army for failure in conduct during the incident.[24] Following an initial probe, the Israeli Defense Forces did acknowledge that the car had been "mistakenly" targeted by the soldier,[25] upon which they announced the opening of an investigation.[26] While information reported by the media regarding the fact that the soldier would not stand trial remains to be confirmed by the Israeli Defense Forces, the failure to prosecute a soldier who opened fire on a car full of individuals who did not represent a threat to life or of serious injury has raised serious concerns with regard to accountability for conduct that blatantly constitutes excessive use of force.

III. Impediments to the work of human rights defenders

22. Of particular concern is that the prevailing atmosphere of impunity and lack of accountability for alleged violations impedes the work of human rights defenders and journalists, who are increasingly being targeted by the authorities for their work. Human rights defenders are particularly targeted when they seek to ensure accountability for alleged violations of international human rights and humanitarian law. The Human Rights Council has denounced all acts of intimidation and threats against civil society actors and human rights defenders involved in documenting and countering violations of international law and impunity in the Occupied Palestinian Territory, including East Jerusalem.[27]

A. Intimidation and threats against civil society actors

23. Harassment of and violence against human rights defenders, as well as journalists, have been continuously reported.[28] The High Commissioner has warned against the chilling effect of these attacks on freedom of expression.[29]

24. Public statements by senior Israeli leaders and politicians maligning human rights organizations are reinforcing this effect, as illustrated by verbal attacks — which may amount to incitement to violence — faced by a number of Israeli non-governmental organizations. For instance, following a briefing at the Security Council in October 2016, the Director of B'Tselem was publicly condemned by senior officials, including the Prime Minister and the Permanent Representative of Israel to the United Nations. The chair of the ruling government coalition called for him to be stripped of his citizenship.[30] The High Commissioner has expressed concern that the rhetoric by public figures is contributing to an increasingly repressive environment in which human rights organizations and activists in Israel are seen as legitimate targets for threats and violence.[31]

25. The recent growing intimidation of non-governmental organizations that have been calling for the use of foreign jurisdictions and international justice mechanisms to ensure accountability for Israeli violations is of additional concern. OHCHR has regularly reported on these incidents; specific examples include the anonymous death threats received by a representative of the Palestinian non-governmental organization Al-Haq in Europe in

[23] See A/HRC/34/36, para. 9.

[24] See www.haaretz.com/israel-news/.premium-idf-officer-won-t-be-indicted-for-opening-fire-against-rules-killing-palestinian-boy-1.5730351.

[25] See www.theguardian.com/world/2016/jun/21/israeli-troops-mistakenly-kill-palestinian-teenager-stone-throwers; and www.haaretz.com/opinion/premium-palestinian-boy-killed-by-mistake-1.5399928.

[26] See www.haaretz.com/israel-news/israeli-army-opens-investigation-into-death-of-palestinian-teen-1.5399284.

[27] See, for example, resolution 34/28.

[28] See A/HRC/31/40, paras. 52–53; and A/HRC/34/36, paras. 39–42.

[29] See A/HRC/31/40, para. 53.

[30] See A/HRC/34/36, para. 42; and A/HRC/34/38, para. 69. See also www.haaretz.com/israel-news/coalition-chairman-seeks-to-strip-citizenship-of-b-tselem-head-1.5452046.

[31] See A/HRC/34/36, para. 50.

February 2016.[32] Other Palestinian organizations, including Al Mezan, also report having been threatened.[33]

26. Increased political tensions linked to the Palestinian political divide have created an environment conducive to human rights abuses and violations by Palestinian authorities, in particular in relation to the rights of freedom of expression and peaceful assembly. Instances of targeting political opponents through harassment, threats, assaults, arbitrary arrests, ill-treatment and torture have also been reported.[34] OHCHR regularly receives reports of human rights violations perpetrated by the Palestinian security forces and the authorities in Gaza, particularly against individuals and groups critical of the respective Palestinian authorities.[35]

B. Arbitrary detention of human rights defenders

27. The arrest and detention of human rights defenders by both Israeli and Palestinian authorities is of concern. In his report to the current session of the Human Rights Council (A/HRC/37/42) the High Commissioner shows, on the basis of cases monitored by OHCHR, that all duty bearers in the Occupied Palestinian Territory resort to this practice. According to the Working Group on Arbitrary Detention, the deprivation of liberty resulting from the exercise of fundamental freedoms is to be considered as arbitrary.[36]

28. The freedoms of expression, association and peaceful assembly are guaranteed by international human rights law.[37] While restrictions on the exercise of these rights are permitted, such restrictions must be provided by law and respect the strict conditions of necessity and proportionality.[38] The arrest and detention of human rights defenders because of their work not only infringes upon their rights to freedom of expression, association and peaceful assembly, but also contributes to the creation of a repressive environment and may lead to self-censorship among the population of the Occupied Palestinian Territory and in Israel.

C. Legislative measures affecting civil society

Israeli legislation

29. Recent legislative measures are likely to result in increased pressure on human rights organizations in Israel. In June 2016, the Knesset adopted the so-called Transparency Law, which requires non-governmental organizations that receive more than 50 per cent of their funding from foreign public sources to declare this publicly. The law is expected to have a disproportionate impact on human rights organizations, as most of their funding comes from abroad.[39] The Secretary-General noted that the law contributes to a climate in which the activities of human rights organizations are increasingly delegitimized.[40] In June 2017, Prime Minister Netanyahu announced his intention to further strengthen the Transparency Law by limiting the amount of donations organizations may receive.[41]

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[32] See www.alhaq.org/advocacy/topics/human-rights-defenders/1026-al-haq-under-attack-staff-members-life-threatened. See also A/HRC/34/26, para. 48; and A/HRC/34/38, para. 69.

[33] See www.mezan.org/en/post/21475/Al+Mezan+Condemns+Continued+Death+Threats+to+Staff+Members+and+Calls+on+the+International+Community+to+Intervene. See also A/HRC/34/70, paras. 39–53.

[34] See, for example, A/HRC/37/42, paras. 57–60.

[35] See A/HRC/31/40, paras. 66–67; A/HRC/34/36, paras. 51–53; and A/HRC/34/38, para. 70.

[36] See A/HRC/33/66.

[37] International Covenant on Civil and Political Rights, arts. 19 and 21–22.

[38] See A/HRC/37/42, para. 40.

[39] See www.haaretz.com/israel-news/.premium-ngo-law-would-apply-almost-solely-to-human-rights-organizations-1.5390248.

[40] See A/HRC/34/36, para. 49. See also www.un.org/apps/news/story.asp?NewsID=54438#.WlyNc7yWbIU.

[41] See www.timesofisrael.com/netanyahu-confirms-knesset-push-to-limit-ngos-foreign-funding/.

30. The Civil Service Law, which was enacted in March 2017, also raises concern with respect to the operational space of civil society organizations. It will enter into force on 1 April 2018. While this law does not bar foreign-funded non-governmental organizations from accepting national service volunteers, it stipulates that receipt of a volunteer by such organizations has to be specifically approved by the Prime Minister or any other minister authorized by the Government.

31. A bill denying tax benefits to certain organizations considered to act against the State of Israel was, at the time of writing, being promoted in the Knesset.[42] The proposal seeks to deny tax credit to donors who give money to public institutions that "act against the State of Israel", defined as including institutions that issue publications in which the State of Israel is accused of committing war crimes or call for a boycott against Israel or its citizens. The proposal also seeks to narrow the definition of "public institution" and to establish that the tax benefit will only be granted to persons who donate to an organization that acts on behalf of the citizens of the State of Israel or the Jewish Diaspora.

32. In March 2017, the Knesset adopted an amendment to the Entry into Israel Law,[43] which prohibits the granting of a visa or licence to persons who are not citizens or permanent residents of Israel if they or the organization for which they work has knowingly issued a public call to impose a boycott on Israel, or has committed to participating in such a boycott.[44] The amendment is worded broadly, automatically prohibiting the issuance of visas in the circumstances stated. The Minister of the Interior is authorized to make exceptions, with reasons provided in writing. The definition of "boycott" is explicitly articulated in the 2011 Boycott Law and includes boycotts aimed at Israeli settlements located in the Occupied Palestinian Territory.[45] In early January 2018, media published the so-called boycott divestment and sanctions list, containing the full list of organizations whose members will be barred from entering the country, that was reportedly divulged by the Strategic Affairs Ministry.[46]

33. In November 2017, a bill to amend the 2011 Boycott Law[47] passed a preliminary reading and was under preparation for first reading at the time of writing the present report. Criminalizing the act of calling for a boycott, the law notably enables the filing of civil lawsuits against anyone who calls for boycott and empowers the court to award compensation, including punitive damages, even if no actual damage is proven. The amendment proposes to limit to NIS 100,000 the amount of compensation when no actual damage is caused, and to NIS 500,000 if the court establishes that the call for boycott is done intentionally, in a systematic and organized manner.

34. As highlighted by the High Commissioner and several United Nations special rapporteurs, such laws will have significant negative effects on civil society space in Israel, the Occupied Palestinian Territory and beyond.[48] The cumulative effect of this legislation extends beyond the legal barriers created, which seem to predominately affect human rights organizations. According to many human rights organizations, the public discourse which surrounded the drafting and adoption of this legislation has had a detrimental effect on their reputation among Israeli citizens. Possible legal penalties, as well as risks to the reputations of civil society organizations, and particularly human rights organizations, have a chilling effect on their ability to address sensitive issues.

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[42] As at January 2018, the "Income Tax Ordinance (Institutions Acting for the Benefit of the State of Israel)" was being prepared for first reading.

[43] Amendment No. 5777-2017.

[44] See A/72/565, paras. 45–46.

[45] The Law for the Prevention of Damage to the State of Israel through Boycott (No. 5771-2011) defines boycott as deliberately avoiding all economic, cultural or academic ties with an individual or other body, based solely on affiliation with Israel or any of its institutions or area under its control, in a manner that would cause economic, cultural or academic harm.

[46] See www.haaretz.com/israel-news/1.833502.

[47] Amendment No. 5771-2011.

[48] See A/HRC/34/36, para. 49, See also www.un.org/apps/news/story.asp?NewsID=54438#.WlyNc7yWbIU; www.un.org/apps/news/story.asp?NewsID=54319#.WCXEZS196M9; and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20177&LangID=E.

Palestinian legislation

35. During the past five years, Palestinian authorities — in both the West Bank and in Gaza — also took a number of legislative steps that narrow the operative space of non-governmental organizations.

36. Following decisions of the Government of the State of Palestine in July 2015 and April 2016, all non-profit companies are required to seek the authorization of the Ministry of National Economy to receive any funding. Further to these decisions, and without prior notification, the bank accounts of a number of non-profit companies were reportedly frozen at the instruction of the Palestinian Monetary Authority and funding was released only after these companies supplied a complete breakdown of their operations to the Government. Some had to wait for several months to get government approval, despite having provided the requested documents.

37. These requirements seem to considerably impede access to funding and the conduct of financial transactions by these non-profit organizations and potentially undermine their autonomy and scope of operation. The measures have also restricted the ability of organizations to deliver crucial social and, in some instances, humanitarian services, including in Gaza.

38. In April 2016, the Gaza offices of non-governmental organizations based in the West Bank were ordered to register with the authorities in Gaza, despite their pre-existing registration with the Palestinian Authority. Among other requirements of registration, the West Bank headquarters offices of those organizations were asked to seek the authorization of the authorities in Gaza to open a branch office there. Despite reservations related to the status of the authorities in Gaza, a number of organizations complied with the requirements out of fear that the Hamas authorities would close down their offices and halt their operations.

39. Within a general context of restrictions on freedom of expression in the West Bank, the so-called Palestinian cybercrime law was adopted by presidential decree on 24 June 2017.[49] The law criminalizes the publication of data (or the creation of websites to this effect) that violates "public morality" and "public order", endangers "community safety", or insults "holy sites, religions and beliefs" as well as "family values". Based on such overly broad terms, the law could potentially be used to undermine freedom of expression, and has in fact already been invoked to arrest and detain several journalists and human rights defenders.[50] Despite the commitments expressed by the Government to take into account the concerns raised by OHCHR and of civil society about this law, it remains unchanged and is being applied.

IV. Third-State responsibility

40. In its resolution 34/28 the Human Rights Council called upon all States to promote compliance with international law and all High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) to respect, and to ensure respect for, international humanitarian law in the Occupied Palestinian Territory, in accordance with article 1 common to the Geneva Conventions.

41. Ensuring respect implies taking measures to prompt States to act in compliance with international humanitarian law.[51] The Security Council, the General Assembly and the

[49] See www.amnesty.org/download/Documents/MDE1569832017ENGLISH.pdf.

[50] See A/HRC/37/38, paras. 58–59; and A/HRC/37/42, paras. 42 and 50–51.

[51] See A/HRC/34/38, para. 12. See also the commentary of the International Committee of the Red Cross (ICRC) to article 1 common to the Geneva Conventions, 2016, para. 154, available at https://ihl-databases.icrc.org/ihl/full/GCI-commentaryArt1; paragraph 4 of the declaration of 5 December 2001 of the Conference of High Contracting Parties to the Fourth Geneva Convention; International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 134, paras. 158–159 and *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 14, para. 220.

majority of States parties to the Geneva Conventions have relied on this obligation when calling upon third States to call upon Israel to respect international humanitarian law.[52]

42. In resolution 34/28, the Human Rights Council also called upon all duty bearers to pursue the implementation of the recommendations of the United Nations independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem. In its report, the fact-finding mission also referred to third-State responsibility concerning situations where a State was breaching peremptory norms of international law. States should not recognize as lawful a situation that violates international law, or render aid or assistance in maintaining that situation. Accordingly, third States should not recognize the unlawful situation resulting from Israeli settlements, or aid or assist Israel in this regard.[53] In addition, third States shall also cooperate to bring to an end, through lawful means, any serious breach arising under a peremptory norm of general international law.[54] Such cooperation is also implied by Article 1 (3) of the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms, as expressly recalled by most of the international human rights treaties.[55]

43. Recognizing that "business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements",[56] the fact-finding mission also called upon all Member States to take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, that conducted activities in or related to the settlements respect human rights throughout their operations.[57]

44. As provided for in various international law instruments, third States should take measures when States are violating international law. This obligation should be emphasized with regard to the context of the Occupied Palestinian Territory. In his comprehensive review on the status of recommendations addressed to all parties since 2009 as pertains to the Occupied Palestinian Territory, the High Commissioner identified 141 recommendations pertaining to international engagement.[58] Of those recommendations, only slightly over 10 per cent have been fully implemented, while over half of them appear not to have been implemented at all.[59]

V. Conclusions and recommendations

45. **The High Commissioner has previously expressed "serious concerns regarding the lack of accountability related to past cycles of violence and escalation in Gaza and to incidents in the West Bank, including East Jerusalem, and in the access-restricted areas of the Gaza Strip".[60] As reflected in the update provided in the present report,**

[52] See, for example, Security Council resolutions 465 (1980) and 2334 (2016); paragraphs 9 and 10 of General Assembly resolution 70/89; and paragraph 4 of the declaration of 17 December 2014 of the Conference of High Contracting Parties to the Fourth Geneva Convention.

[53] See A/HRC/22/63, para. 116. See also the ICRC 2016 commentary on article 1 common to the Geneva Conventions, para. 163; see further *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, paras. 157–159.

[54] International Law Commission, draft articles on the responsibility of States for internationally wrongful acts, arts. 40 (1) and 41 (1).

[55] See preamble to the International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Rights of the Child; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; International Convention on the Elimination of All Forms of Racial Discrimination; and Convention on the Rights of Persons with Disabilities.

[56] See A/HRC/22/63, para. 96.

[57] Ibid., para. 117.

[58] See A/HRC/35/19/Add.1, paras. 28–36.

[59] Ibid., table 1 and paras. 63–81.

[60] See A/HRC/31/40/Add.1, para. 39.

these concerns remain valid today, particularly, during the period under review, in relation to lack of accountability for continued allegations of excessive use of force by Israeli forces, as well as allegations related to the 2014 escalation of hostilities in Gaza that remain unaddressed.

46. **Alongside allegations related to the use of force, the work of human rights defenders is increasingly being challenged. Civil society organizations, journalists and human rights defenders must be permitted space to do their work, including calling for accountability for alleged violations of international human rights law and international humanitarian law. Measures which seek to hinder this work — for example through arrest and detention or the passage of stigmatizing legislation — raise serious concerns about the exercise of the right to freedom of expression and risk shrinking civic space.**

47. **Further, the comprehensive review of recommendations aimed at ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem, revealed that throughout the reports analysed for the review, general patterns of human rights violations and non-implementation of recommendations were not just symptoms of the conflict but further fuelled the cycle of violence.[61] As emphasized by the Secretary-General, lack of accountability "compromises chances for sustainable peace and security. Tackling impunity must be the highest priority."[62] The High Commissioner once again echoes this call.**

48. **Recalling the follow-up measures described in the comprehensive review, which remain valid, the High Commissioner further:**

(a) **Calls upon Israel to fully comply with its obligations under international human rights law and international humanitarian law in the Occupied Palestinian Territory;**

(b) **Urges Israel to conduct prompt, thorough, effective, impartial and independent investigations of all alleged violations and abuses of international human rights law and international humanitarian law, in particular all alleged international crimes, and calls on Israel to ensure that all victims have access to remedies and reparation;**

(c) **Urges the State of Palestine to conduct prompt, thorough, effective, impartial and independent investigations of all alleged violations and abuses of international human rights law and international humanitarian law, in particular all allegations of international crimes, and calls on the State of Palestine to ensure that all victims have access to remedies and reparation;**

(d) **Recommends that all parties respect international law, including international humanitarian law, in particular the principles of distinction, proportionality and precaution, and ensure accountability for grave violations;**

(e) **Reiterates the calls to all States and to relevant United Nations bodies to take all necessary measures to ensure full respect and compliance with the relevant resolutions of the Human Rights Council, the General Assembly and the Security Council, including resolution 2334 (2016);**

(f) **Calls upon all States parties to the Geneva Conventions to take measures to ensure respect of the Conventions by all parties.**

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[61] See A/HRC/35/19, para. 81.

[62] See A/71/364, para. 6.